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Calcutta High Court

Case No: Writ Petition No. 16628 (W) of 1999

Bhuban Mohan Pal	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: Aug. 10, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Co-operative Societies Rules, 1974 - Rule 48
- West Bengal Co-operative Societies Rules, 1987 - Rule 48

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Indranath Mitra, for the Appellant;Sarmila Das, for the Respondent

Final Decision: Dismissed

Judgement

Debasish Kar Gupta, J.
This writ application is directed against the charge-sheet dated July 16, 1984, enquiry report dated June 29, 1989 and the order of punishment dated May 31, 1999 passed against the petitioner.

2. The brief history of this case is as under:

The petitioner was working for gain as Lower Division Clark under the respondent bank. Subsequently he was promoted to the post of out door officer. A charge-sheet dated July 16, 1984 was issued against him. The petitioner submitted his reply dated August 13, 1984 to the above charge-sheet. An enquiry was conducted against him. An enquiry report was submitted by the enquiry officer to the disciplinary authority. Thereafter, a show-cause notice dated February 21, 1986 was issued by the disciplinary authority under the provisions of the proviso to Rule 48(f) of the West Bengal Cooperative Societies Rules 1974 directing the petitioner to show-cause as to why he should not be

removed from the service of the respondent bank. The petitioner submitted his reply dated March 5, 1986 to the above show cause notice. By virtue of the order dated March 15, 1986 the services of the petitioner was terminated.

3. The petitioner filed an application under Article 226 of the Constitution of India bearing C.O. 482(W) 1986 and the same was disposed of by setting aside the above order of termination as also directing the respondent bank to hold a fresh enquiry and to conclude the same within a time frame. Since the enquiry was not concluded within the time frame, a contempt application was filed by the petitioner and the same was disposed of with direction upon the respondent to conclude the enquiry within June 21, 1989. Ultimately, the disciplinary authority passed an order dated July 24, 1989 dismissing the petitioner from July 16, 1984.

4. The petitioner again filed an application under Article 226 of the Constitution of India and the same was allowed by quashing the order of termination. The respondent bank preferred an appeal against the above order and the appeal was disposed of on July 29, 1994 by setting aside the order of the learned Trial Judge remanding the matter back for fresh hearing and decision. The above writ application bearing C.O. No. 1127 of 1989 was disposed of on April 9, 1998 setting aside the order of dismissal. The respondent bank preferred an appeal against the above order bearing FMAT 1569 of 1998 and the same was disposed of on July 9, 1998 with the following order.

In that view of the matter, in modification of the order passed by the learned Trial Judge, we direct that the writ petitioner shall continue to remain under suspension. Although the order of termination is set aside, the Disciplinary Authority shall furnish a copy of the enquiry report to the petitioner, if not already furnished, and further shall give him an opportunity to make a representation there against. Upon receipt of such representation from the writ petitioner, it any, the Disciplinary Authority shall apply his mind afresh and pass an appropriate order in accordance with law on the basis of the materials on record.

For the views we have taken, it is not necessary for us to consider the correctness or otherwise of the decision of the learned Single Bench of this Court reported in 61 CHN 880. However, we may observe that there can be any doubt whatsoever that an order of termination takes effect from the date of communication of the said order.

Before parting with this case, we may record the submissions of Mr. Sanyal that despite the order dated 29.7.94 the petitioner has not been able to withdraw the balance Rs. 10,000 which is laying deposited with the Registrar, Appellate Side of this Court. In view of the fact that the writ petitioner shall be entitled to the subsistence allowance as well as current and future subsistence allowance, he may now be permitted to withdraw the said sum of Rs. 10,000 which sum together with other sum paid to him would be adjusted against the petitioner''s claim of substance allowance, if any. The appellant shall pay the balance amount of the substance allowance as is admissible in law to the petitioner, if any, within six weeks from the date.

If any application for Xerox certified copy of this order is made by any of the parties, the department shall cause the same to be supplied within three days from the date of receipt of this order.

5. In terms of the above order the respondent bank forwarded copy of the enquiry report dated June 29, 1989 to the petitioner. The petitioner submitted his representation to the enquiry report dated October 14, 1998. A second show-cause notice dated January 4, 1999 was served upon he petitioner and the petitioner submitted his reply dated January 16, 1999 to the same. Finally the impugned order was passed against the petitioner. Hence this writ application.

6. It is submitted by the learned Counsel appearing for the petitioner that the charges were not specifically mentioned in the charges-sheet Statement of allegation, list of witnesses, list of documents were not supplied to the petitioner. Therefore, according to him there was violation of principle of natural justice. It is also submitted by him that the name of the enquiry officer was disclosed in the above charge-sheet without giving the petitioner an opportunity to deal with the charges leveled against the petitioner in the above charge-sheet. According to the petitioner, the finding made in the enquiry report were based on no evidence and the respondent authority fail to apply his mind on the representation submitted by the petitioner to the enquiry report. The disciplinary authority did not assign any reason in support of his difference of opinion with the enquiry officer. It is finally submitted by him that the punishment imposed upon the petitioner was shockingly disproportionate to the charges levelled against him.

7. The learned advocate appearing for the petitioner relies upon the decisions of Steel Authority of India Ltd. v. Debasish Biswas reported in (2007) 2 CLJ (Cal) 209, Surath Chandra Chakrabarty Vs. State of West Bengal, , State of U.P. Vs. Shatrughan Lal and Another, , Sushil Kumar Ganguly v. Union of India reported in 1985(1) CHN 8, Himangshu Kumar Bose v. Union of India reported in 1985(1) CHN 252, Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, , State of Punjab v. V.K. Khanna reported in AIR 2001 SC 343, Tea Board and Another Vs. Rasamoy Roy and Others, , Union of India v. Shri Saied Meera reported in (2007) 2 CLJ(Cal) 156, Ranjit Singh v. Union of India reported in 2006(2) WBLR SC 637 , Bharat Raja Vs. The Union of India (UOI) and Others, , The State of Punjab and Others Vs. Bakhtawar Singh and Others, , Nand Kishore Prasad Vs. State of Bihar and Others, State of Bihar and Ors. v. Lakshmi Shankar Prasad reported in, (2003) 3 LLJ 225SC , State of Andhra Pradesh Vs. Sree Rama Rao, , State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , L.K. Verma Vs. H.M.T. Ltd. and Another, in support of his submissions.

8. On the other hand it is submitted by the learned Counsel appearing on behalf of the respondent bank that by virtue of an order dated July 9, 1991 passed in MAT No. 1569 of 1998 the order of termination was set aside directing the respondent authority to proceed

de novo from the stage of submitting of representation by the petitioner to the enquiry report. According to him that order was complied with. A copy of the enquiry report was served upon the petitioner on July 25, 1998. The petitioner submitted his reply to the same and after considering this reply the second show-cause notice dated January 4, 1999 was served upon him. The petitioner also filed his reply dated January 16, 1949 to the same. Thereafter, the impugned order was passed. According to him there is no scope for challenging the disciplinary proceeding under reference. The learned Counsel also argued in support of the validity of charge-sheet to the enquiry proceeding and the enquiry report thereof as also the impugned order of punishment.

9. The learned Counsel appearing for the respondents relied upon the decisions of Kuldip Singh Vs. State of Punjab and Others, , Commissioner of Police, New Delhi Vs. Narender Singh, Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , Chairman and Managing Director, United Commercial Bank and Ors. v. R.C. Kakkar reported in (2003) 4 SCC 365, Apparel Export Promotion Council v. A.K. Chopra reported in (1991) 1 SCC 459 , Bank of India and Others Vs. T. Jogram, , J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, , Disciplinary Authority Cum Regional Manager v. Nikunja Bihari Patnaik reported in (196) 6 SCC 69, State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, in support of his submissions.

10. I have hard the learned Counsel appearing for the respective parties at length and have considered the facts the circumstances of this case carefully.

11. In order to ascertain this Court and ambit of adjudicating the decision making process of the disciplinary proceeding in question beyond the stage of submitting enquiry report, the order passed by the Division Bench of this Court on July 9, 1998 in MAT No. 1569 of 1998 is required to be taken into consideration.

12. I find that the above appeal was disposed of on short question of violating the provisions of proviso to Rule 48(f) of the West Bengal Cooperative Societies Rule 1987 considering the question of supplying enquiry report to the petitioner for submitting his representation. In the representation dated October 14, 1998 the petitioner raised the question of validity of the enquiry proceeding. Therefore, the validity of the enquiry proceeding was not examined earlier. It is open for this Court to examine the validity of the enquiry proceeding on the basis of the allegations raised by the petitioner against it in his representation.

13. It is necessary to point out here that the validity of the charge-sheet was not in question in any of the previous proceedings. Therefore, the decisions of Steel Authority of India Ltd. (supra) Surath Chandra Chakravarty (supra), Shatrughan Lal (supra), Sushil Kumar Ganguly (supra), Himangshu Kumar Bose (supra), M/s. Bareilly Electricity Supply Co.(spura) have no manner of application in this case in view of the above facts and circumstances.

14. After perusing the enquiry report dated June 29, 1989 I find that the charge Nos. 2,4,6 were proved on the basis of the enquiry proceeding. Charge No. 2 was proved on the basis of the confessional statement of the petitioner. So, the same was based on evidence. The findings with regard to the charge No. 4 and 6 were also based on evidence. Therefore, there is hardly any scope of interfering with the enquiry report in course of judicial review.

15. Reference may be made in this regard to the decision of T. Jogram (supra) and the relevant portions of the above decision are quoted below:

15. By now it is well-settled principles of law that judicial review is not against the decision. It is against the decision-making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegations of violation of principles of natural justice. Counsel for the respondent tried to sustain the allegation of mala fide. He tried to assert that the respondent filed a case against the Chief Manager of Secunderabad Branch in 1996 and the enquiry initiated against the respondent is the fallout of mala fide. We are unable to accept the bald allegations. The allegation of mala fide was not substantiated. It is well-settled law that the allegation of mala fide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment it is seen that the documents, which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent.

16. In view of the above I do not find that the decision of Shri Saied Meera (supra) is applicable in this case.

17. After pursuing the impugned order of punishment I find that the disciplinary authority relied upon the findings of the enquiry authority. There was no disagreement with the findings of the enquiry officer. No further reason was required to be assigned for imposing the punishment. In view of the facts and circumstances of this case the decisions of Ranjit Singh (Singh), Bhagat Raja (supra), Bakhtawar Singh (supra), Nand Kishore (supra) have no manner of application in this case.

18. I do not find that once the charge Nos. 2.4 and 6 were proved against the petitioner the quantum of punishment could be said to be disproportionate.

19. Therefore, this writ application fails.

20. There will be, however, no order as to costs.

21. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.